

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE LITIGATION

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) MDL No. 1456

THIS DOCUMENT RELATES TO  
01-CV-12257-PBS, 01-CV-339 AND  
1:03-CV-11226-PBS

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) Civil Action No. 01-CV-12257 PBS

) Judge Patti B. Saris

) Chief Magistrate Judge Marianne B. Bowler

**DEFENDANT BRISTOL-MYERS SQUIBB COMPANY’S MOTION TO COMPEL THE  
PRODUCTION OF EXHIBITS TO A LETTER SENT BY PLAINTIFF VEN-A-CARE OF  
THE FLORIDA KEYS TO HCFA**

Defendant Bristol-Myers Squibb Company respectfully moves this Court for an order compelling plaintiff Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”) to produce two volumes of exhibits enclosed with a letter it sent to the Health Care Financing Administration (“HCFA”, now, Centers for Medicare and Medicaid Services (“CMS”)) pursuant to several requests for production communicated to Ven-A-Care, and for such other and further relief as the Court deems just and appropriate. The grounds for this motion are set forth in the accompanying memorandum of law, declaration of Lyndon M. Tretter and exhibits thereto.

**CERTIFICATION PURSUANT TO LOCAL RULE 37.1**

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel hereby certifies that counsel for Bristol-Myers Squibb Company attempted to confer with counsel for Ven-A-Care regarding the issues addressed in this motion, but was unable to resolve or further narrow the issues. More specifically, on March 6, 2006, Mr. Tretter spoke with Ven-A-Care’s counsel, Jim Breen, and asked whether Ven-A-Care would produce the two volumes of exhibits to the Ven-A-Care Letter. On that same day, Mr. Tretter sent Mr. Breen an e-mail confirming their telephone

conversation. Thereafter, Mr. Tretter left two messages with Mr. Breen's receptionist that were not returned. On March 21, Mr. Tretter sent Mr. Breen a second e-mail asking Ven-A-Care to produce the exhibits and advising him that if Ven-A-Care did not produce the exhibits, it would be necessary to bring this dispute to the attention of the Magistrate Judge.

### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d) the undersigned counsel hereby requests oral argument on the issues set forth in this motion and the accompanying memorandum of law and exhibits.

Dated: Boston, Massachusetts  
April 7, 2006

Respectfully Submitted,

By: /s/ Jacob T. Elberg  
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Attorneys for Defendant Bristol-Myers Squibb  
Company

**CERTIFICATE OF SERVICE**

I certify that on April 7, 2006 a true and correct copy of the forgoing  
DEFENDANT BRISTOL-MYERS SQUIBB COMPANY'S MOTION TO COMPEL THE  
PRODUCTION OF EXHIBITS TO A LETTER SENT BY PLAINTIFF VEN-A-CARE OF  
THE FLORIDA KEYS TO HCFA was served on all counsel of record by electronic service  
pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File  
& Serve for posting and notification to all parties.

/s/ Lyndon M. Tretter

Lyndon M. Tretter